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5	POLLUTION CONTRO	I. HEARINGS BOARD		
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7	COPPER DEVELOPMENT ASSOCIATION INC., and THE INTERNATIONAL COPPER ASSOCIATION, LTD.,	No.		
8	Association, LtD., Appellants,			
9	V.	NOTICE OF APPEAL		
10	WASHINGTON STATE DEPARTMENT OF			
11	ECOLOGY,			
12	Respondent.			
13				
14	The Copper Development Association Inc	., ("CDA") and the International Copper		
15	Association, Ltd., ("ICA") representing members	who are subject to the action challenged herein		
16	("collectively, Appellants"), seek review by the Pollution Control Hearings Board ("Board") of			
17	the Industrial Stormwater General Permit ("ISGP") issued by the Washington State Department			
18	of Ecology ("Ecology") on October 21, 2009, with	h an effective date of January 1, 2010.		
19	1. Name and Address of Appellants	s and Representatives		
20	Appellants in this matter are:			
21	The Copper Development Associated Madison Avenue	tion Inc.		
22	New York, NY 10016 (585) 545-4805			
23	(383) 343-4803			
24	The International Copper Association	ion, Ltd.		
25	260 Madison Avenue New York, NY 10016			
26	(212) 251-7257			
		Martine American Colonial Middle		



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2	Appellants are represented by:	
3	Stoel Rives LLP 600 University Street, Suite 3600	
4	Seattle, WA 98101	
5	(206) 386-7581 (206) 386-7500	
6	2. Name of the Other Party	
7	Respondent is the Washington State Department of Ecology, an agency of the State of	
8	Washington that issued the ISGP described in this Notice of Appeal.	
9	3. Action Appealed	
10	The action appealed from is the final ISGP issued on October 21, 2009 and effective on	t
11	January 1, 2010. True and correct copies of the ISGP and its accompanying Fact Sheet are	
12	attached to this Notice of Appeal as Exhibit A.	
13	4. Statement of Facts	
14	Ecology issued a draft ISGP in June 2009 proposing to establish stringent pollutant	
15	benchmarks, including a copper benchmark at 14 μg/L, (micrograms per liter ) for Western	
16	Washington and 32 µg/L (Eastern Washington). Ecology proposed such stringent benchmarks	
17	claiming they were necessary to protect salmon and other aquatic biota. Benchmarks were	
18	established by Ecology as "indicator values" rather than enforceable effluent limits. Pollutant	
19	concentrations below the benchmark are considered unlikely to cause a water quality violation,	
20	while concentration levels greater than the benchmark may cause a water quality violation.	
21	The ISGP requires permittees to quarterly sample their stormwater discharges.	
22	Monitoring results that do not meet the established benchmarks trigger expensive adaptive	
23	management practices intended to achieve monitoring results at or below the benchmarks. These	
24	adaptive management requirements are progressively tiered to the number of times in a given	
25	year a permittee's sampling reveals pollutants in excess of the benchmarks. Expensive treatmer	nt

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i	best management practices ( Divir's ) are required whenever a permittee exceeds a benchmark		
2	three times in one calendar year. According to Ecology's Boatyard General Permit, the average		
3	cost of treatment BMPs for copper at a facility is expected to exceed \$255,000 per acre.		
4	Ecology sought public comments on the draft permit on June 3, 2009 and received		
<b>5</b> .	comments from more than 100 affected stakeholders, including Appellant CDA. CDA		
6	commented that the proposed copper benchmark was unnecessarily stringent to protect water		
7	quality, and economically unreasonable. CDA explained that the study on which the copper		
8	benchmarks were derived (Herrera 2009) provided an insufficient scientific and technical basis		
9	on which to support the benchmark by ignoring a substantial body of peer- reviewed scientific		
10	literature. CDA further urged Ecology to incorporate one or more of a suite of readily available		
11	and widely accepted tools to consider dilution factors and site-specific variables (including		
12	mitigating chemical and physical factors) that more accurately reflect the real-world conditions		
13	impacting the toxicity of stormwater discharges on affected receiving waters and their aquatic		
14	biota.		
15	The final ISGP ignored CDA's comments and maintains the stringent copper benchmark		
16	at those originally proposed: 14 μg/L (western Washington) and 32 μg/L (Eastern Washington).		
17	These benchmarks are now applicable to 1200 individual sources, the vast majority of whom are		
18	likely to exceed the copper benchmarks and require the employment of expensive treatment		
19	BMPs,		
20	While Ecology provided an option for permittees to seek a waiver of treatment BMPs if		
21	they are either infeasible for a given source or otherwise not necessary to attain water quality		
22	standards, the waiver is unlikely to be useful to a permittee because it is unlikely to be granted by		
23	Ecology in other than exceptional situations. Indeed, any proposed decision by Ecology to grant		
24	such a waiver is subject to public notice and comment and formal permit modification		
25	requirements, including further appeal by any interested person objecting to such modification.		

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1	5. Statement of Grounds for Appeal	
2	For the reasons provided above, the copper benchmarks established in the ISGP are	
3	burdensome, unachievable and unreasonable, far exceed what is necessary to protect water	
4	quality, and as such, are arbitrary, capricious, and contrary to law including, without limitation,	
5	RCW 90.48.555. Specifically, the copper benchmarks do not reflect all known, available and	
6	reasonable methods of prevention, treatment and control ("AKART"), and are not otherwise	
7	necessary to comply with WAC 173-200 and/or WAC 173-201A for the majority of the	
8	dischargers covered under the ISGP. WAC 173-226-070.	
9	6. Relief Sought	
10	Appellants respectfully request that the Board enter an order: (1) finding that the ISGP is	
11	invalid as to the copper benchmarks and that those provisions are unreasonable, unlawful, or	
12	unnecessary; (2) ordering Ecology to reissue a final ISGP as directed by the Board and consistent	
13	with the Board's findings and conclusions regarding the issues listed above; and (3) granting	
14	other relief as the Board deems appropriate.	
15	11	
16	DATED: November <u>/6</u> , 2009. STOEL RIVES LLP	
17		
18	Beth Ginsberg, WSB No. 18523	
19	Beth Ginsberg, WSB No. 18523 Attorneys for Appellants	
20	Copper Development Association Inc., and The International Copper Association, Ltd.,	
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